

Kramer Levin



Barry H. Berke
Partner
T 212.715.7560
F 212.715.7660
bberke@kramerlevin.com

1177 Avenue of the Americas
New York, NY 10036
T 212.715.9100
F 212.715.8000



MARY E. MULLIGAN
mmulligan@fklaw.com
212.833.1123

January 16, 2024

BY ECF AND EMAIL

Hon. Alvin K. Hellerstein
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Sung Kook (Bill) Hwang, et al., No. 22 Cr. 240 (AKH)

Dear Judge Hellerstein:

On behalf of defendants Sung Kook (Bill) Hwang and Patrick Halligan, we respectfully submit a proposed Juror Questionnaire for the Court's consideration in the upcoming trial in the above-captioned action, scheduled to begin February 27, 2024.

Given the heightened publicity surrounding the specific facts that will be at issue in this case, Mr. Hwang respectfully seeks permission to use the attached Juror Questionnaire to ensure that each juror is able to evaluate Mr. Hwang's case impartially. A juror questionnaire of the type proposed is necessary to "uncover bias as to issues in the case[] and as to the defendant himself." *United States v. Barnes*, 604 F.2d 121, 140 (2d Cir. 1979).

The facts of this case have been the subject of intense speculation in news articles, YouTube videos, and social media posts from as early as Archegos's collapse at the end of the week of March 22, 2021.¹ That press coverage, unsurprisingly, presents incomplete and

¹ See, e.g., Jack Ewing & Eshe Nelson, *Fallout From Hedge Fund's Defaults Spreads Through Markets*, N.Y. TIMES (Mar. 29, 2021); <https://www.nytimes.com/live/2021/03/29/business/stock-market-today#:~:text=Bank%20stocks%20tumble%20following%20an%20investment%20firm's%20defaults.&text=Shares%20in%20Credit%20Suisse%2C%20the,by%20an%20American%20investm ent%20firm>; ColdFusion, *When Risk Taking Goes Too Far – The Archegos Collapse*, YOUTUBE (June 1, 2021), <https://www.youtube.com/watch?v=NtP3xT53dkU> (last visited Jan. 16, 2024); Elizabeth Warren (@SenWarren), TWITTER (Mar. 30, 2021, 3:30 PM), <https://twitter.com/SenWarren/status/1376980254774984707>.

inaccurate depictions of what occurred at Archegos, mischaracterizing the dealings between Archegos and the counterparties, and the propriety of Archegos's investment decisions.

Moreover, many articles imply wrongdoing at Archegos by referencing decade-old regulatory actions against Tiger Asia Management, Mr. Hwang's predecessor fund, and suggest that common market instruments are somehow dubious. Just days after the collapse, on March 30, 2021, Senator Elizabeth Warren was quoted in a Bloomberg article, commenting on how "Archegos' meltdown had all the makings of a dangerous situation — largely unregulated hedge fund, opaque derivatives, trading in private dark pools, high leverage, and a trader who wriggled out of the SEC's enforcement."² *The Wall Street Journal* published daily articles about Archegos between March 28 and April 1, each of which refer to the regulatory actions against Tiger Asia, and suggest total return swaps are questionable investment vehicles.³ The *Journal's* April 1, 2021 long-form article titled "Inside Archegos's Epic Meltdown," opines that Archegos's collapse exemplifies the "havoc that errant large investment vehicles called 'family offices' can wreak on our financial markets" and diagnoses that Mr. Hwang's "appetite for risk" extends "beyond big bets."⁴

The press continued to analyze Archegos's collapse throughout 2021. On June 1, 2021, ColdFusion, a popular content creator with almost 4.7 million subscribers on YouTube, published a video titled "When Risk Taking Goes Too Far – The Archegos Collapse."⁵ That video, which has garnered over 1.8 million views, misrepresents key issues relevant to this case. It also includes prejudicial characterizations of Mr. Hwang's actions, including that he "indulged in casino-like risk," and "concealed" his holdings. On August 9, 2021, Bloomberg published a feature describing Department of Justice probes into whether Archegos misled lenders.⁶ A day

² Jarrell Dillard, *Warren Urges Increased Banking Oversight After Archegos Blowup*, BLOOMBERG (Mar. 30, 2021), <https://www.bloomberg.com/news/articles/2021-03-30/warren-urges-increased-banking-oversight-after-archegos-blowup>.

³ See Juliet Chung & Maureen Farrell, *Ex-Tiger Asia Founder Triggers \$30 Billion in Large Stocks Sales*, WALL ST. J. (Mar. 28, 2021), <https://www.wsj.com/articles/ex-tiger-asia-founder-triggers-30-billion-in-large-stocks-sales-11616973350>; Juliet Chung & Andrew Jeong, *Who is Archegos Fund Manager Bill Hwang?*, WALL ST. J. (Mar. 29, 2021), <https://www.wsj.com/articles/who-is-archegos-fund-manager-bill-hwang-11617037264>; Quentin Webb, et al., *What is a Total Return Swap and How Did Archegos Capital Use It?*, WALL ST. J. (Mar. 30, 2021), <https://www.wsj.com/articles/what-is-a-total-return-swap-and-how-did-archegos-capital-use-it-11617125839>.

⁴ Gregory Zuckerman, et al., *Inside Archegos's Epic Meltdown*, WALL ST. J. (Apr. 1, 2021), <https://www.wsj.com/articles/inside-archegos-epic-meltdown-11617323530>.

⁵ ColdFusion, *supra* note 1.

⁶ Sridhar Natarajan & Katherine Burton, *The Man Who Lost \$20 Billion in Two Days is Lying Low in New Jersey*, BLOOMBERG (Aug. 9, 2021), <https://www.bloomberg.com/news/features/2021-08-09/where-is-bill-hwang-the-man-who-lost-20-billion-after-archegos-collapsed>.

later, Bloomberg published a YouTube video titled “How to Lose \$20 Billion in Two Days,” which, like ColdFusion’s video, has been viewed 1.8 million times.⁷ This reporting was followed by similarly intense coverage when Mr. Hwang and Mr. Halligan were indicted in April 2022.⁸ And frequent coverage has continued in the leadup to trial that will no doubt become more intense as we get closer to trial.⁹

The defense intends to rely on the record at trial, but will be prejudiced in doing so if faced with jurors who have prejudged the facts at issue due to this extensive media coverage. It is well-established that where a case gives rise to extensive and inflammatory pretrial publicity, the use of a written juror questionnaire is appropriate to facilitate voir dire and help ensure empanelment of a fair jury. *See e.g., United States v. Whitten*, 610 F.3d 168, 184-85 (2d Cir. 2010) (approving district court’s employment of a 54-page questionnaire that addressed, *inter alia*, “relevant media exposure” and prospective jurors’ “opinions and biases”); *United States v. Stewart*, 433 F.3d 273, 303 (2d Cir. 2006) (“Prompted by . . . extensive publicity surrounding th[e] case, the District Court undertook a two-step *voir dire* process,” the first step of which involved “prospective jurors complet[ing] a questionnaire drafted by the parties” that served as a basis for for-cause challenges, followed by individual questioning); *United States v. Rahman*, 189 F.3d 88, 121-22 (2d Cir. 1999) (praising use of a nineteen-page questionnaire that inquired into pretrial publicity, among other things, where there was a large jury pool)

The use of a written juror questionnaire will also expedite the voir dire process. Courts have recognized that utilizing such a questionnaire for pre-screening a large jury pool serves to “conserve judicial resources by saving a substantial amount of time relative to a jury selection process in which the entire voir dire is conducted orally.” *United States v. Ashburn*, No. 13-cr-303 (NGG), 2014 WL 5800280, at *17-18 (E.D.N.Y. Nov. 7, 2014); *United States v. Dervishaj*,

⁷ Bloomberg Originals, *How to Lose \$20 Billion in Two Days*, YOUTUBE (Aug. 10, 2021), <https://www.youtube.com/watch?v=MhMhg97fmzE> (last visited Jan. 16, 2024).

⁸ *See, e.g.,* Joshua Franklin & Eric Platt, *Why Did Wall Street Loan Billions to Alleged Fraudster Bill Hwang?*, FIN. TIMES (Apr. 28, 2022), <https://www.ft.com/content/7ece9e7d-a7c3-4276-9d3d-7ac47634f219>; Matthew Goldstein & Lananh Nguyen, *Archegos Stock Manipulation Scheme Was ‘Historic’, U.S. Attorney Says*, N.Y. TIMES (Apr. 27, 2022), <https://www.nytimes.com/2022/04/27/business/archegos-bill-hwang-patrick-halligan.html>; Corrinne Ramey, et al., *Archegos Founder Bill Hwang, Former CFO Charges With Securities Fraud*, WALL ST. J. (Apr. 27, 2022), <https://www.wsj.com/articles/archegos-founder-and-cfo-charged-with-securities-fraud-11651059901>.

⁹ *See, e.g.,* James Fanelli & Corinne Ramey, *Judge Denies Archegos Founder’s Request to Toss Criminal Charges*, WALL ST. J. (Mar. 21, 2023), <https://www.wsj.com/articles/archegos-founder-bill-hwang-to-see-dismissal-of-market-manipulation-charges-3b7f9ed3>; Reuters, *Archegos Founder Bill Hwang to Faces SEC Fraud Charges Over \$36B Firm’s Epic Collapse*, N.Y. POST (Sept. 19, 2023), <https://nypost.com/2023/09/19/archegos-founder-bill-hwang-must-face-sec-fraud-charges/>; Bill Alpert, *Nomura Lost \$2.9 Billion in the Archegos Collapse. A Suit Alleges There Were Warning Signs.*, BARRON’S (Dec. 22, 2023), <https://www.barrons.com/articles/nomura-lost-2-9-billion-in-the-archegos-collapse-a-suit-alleges-there-were-warning-signs-a93369f2>.

No. 13-cr-668 (ENV), 2015 WL 3794803, at *2 (E.D.N.Y. June 17, 2015) (adopting use of a written questionnaire and noting it would “save time and resources”).

Individually screening potential jurors helps uncover bias caused by pre-trial publicity. Jurors are more likely to disclose biases in confidential responses to written questionnaires and *in camera* than in open court. *See, e.g., United States v. Bruno*, 700 F. Supp. 2d 175, 178-79, 182 (N.D.N.Y. 2010) (court promised confidentiality to venire members where “the questions elicited personal disclosures that normally receive privacy guarantees,” including questions about “financial investments,” noting that “sensitive information that may endanger, harass, intimidate, or embarrass”). Additionally, individual questioning of prospective jurors “prevent[s] the spread of any prejudicial information to other venire members.” *Skilling v. United States*, 561 U.S. 358, 389 (2010).

We respectfully submit that individual questioning of each juror who has been exposed to adverse publicity concerning Mr. Hwang, Mr. Halligan, or Archegos is necessary to ensure that a fair and impartial jury is empaneled.

Respectfully submitted,



Barry H. Berke
Dani R. James
Jordan Estes
Michael Martinez



Mary E. Mulligan

cc: Counsel of record